United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

77-7181

United States Court of Appeals

For the Second Circuit

Docket No. 77-7181

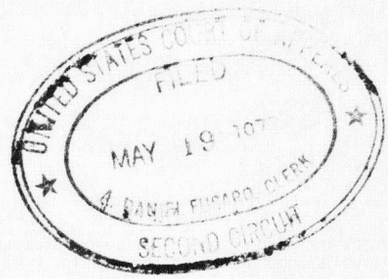
ALLEN BREISBLATT, PAULA BREISBLATT, THOMAS A. OLSEN, DEBRA F. OLSEN, JAMBERT W HOLST, DOROTHY MOBLEY, RICHARD A. HLAVENKA, JUDITH HLAVENKA, THORTON McCOY AND EDNA McCOY,

Plaintiffs-Appellants,

v.

BAKER-FIRESTONE, INC. and EDWIN J. GEHER,

Defendants-Appellees.



APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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Attorneys for Plaintiffs-Appellants
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New York, New York 10007
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PAGINATION AS IN ORIGINAL COPY

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DIST/OFFICE	YR.	NUMBER	MO.	DAY	YEAR	J	N/S	O	H	23	$	OTHER	NUMBER	DEM.	YR.	NUMBER
208-1	76	3299	07	26	76	3	870	1			17		0856		76	3299

PLAINTIFFS

BREISBLATT, ALLEN
BREISBLATT, PAULA
OLSEN, THOMAS A.
OLSEN, DEBRA F.
HOLST, JAMBERT W.
MOBLEY, DOROTHY
HLAVENKA, RICHARD A.
HLAVENKA, JUDITH
McCoy, THORTON
McCOY, EDNA

DEFENDANTS GRIESA, J.

BAKER FIRESTONE INC.
GEKER, EDWIN J.

CAUSE

To recover treble damages for improper certification for real property tax credit

ATTORNEYS

Edelman & Jennings
277 B'Way NYC 10007
DI9-2181

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CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
	8/26/76	73601		JS-5	
				JS-6	

UNITED STATES DISTRICT COURT DOCKET

DC-111 (Rev. 1/75)

76Civ.3299 ALLEN BREISBLATT Et.Al -v- BAKER FIRESTONE INC. ET.ANO

DATE	NR.	PROCEEDINGS GRIESA,J.
07-26-76	1	Filed complaint and issued. summons...
08-17-76	2.	Filed summons and return - served the following: Edwin J.Geker - personally - on 8-12-76 Baker Firestone Inc. by Mr. Baker on 8-12-76.
03-24-77	(3)	Filed OPINION # 45723 and Order-- for the reasons stated, I hold that there was no violation of the applicable statutes. The action is dismissed. So ordered- GRIESA, J. (m/n)
04-12-77	(4)	Filed NOTICE OF APPEAL of Pltffs to USCA 2nd Circuit from the order of Griesa,J filed 3-24-77. Copy mailed to D'Andrea And Goldstein, 100 Stevens Avenue,Mount Vernon, New York 10550.
May 3-77	5	Filed Stipulation of facts.
May 3-77	6	Filed Defendants reply memorandum of law.
May 3-77	7	Filed plaintiff's brief.
May 3-77	8	Filed memorandum of law.
May 3-77	9	Filed plaintiff's brief in reply to defendants memorandum of law.

B

Complaint

(1) 1a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALLEN BREISBLATT, PAULA BREISBLATT, THOMAS A. OLSEN, DEBRA F. OLSEN, JAMBERT W. HOLST, DOROTHY MOBLEY, RICHARD A. KLAVENKA, JUDITH HLAVENKA, THORTON McCOY and EDNA McCOY,

Plaintiffs,

-against-

BAKER FIRESTONE INC. and EDWIN J. GEKER,

Defendants.

JUDGE GRIESA

76 CIV. 3299

FILED
JUL 26 1 55 PM '76
CLERK OF N.Y.

Plaintiffs by their attorneys, OLGA BERDE MAHL and EDELMAN & JENNINGS, of counsel, as and for their complaint herein respectfully allege and complain of the defendants as follows:-

AS AND FOR A FIRST CAUSE OF ACTION IN FAVOR OF PLAINTIFFS ALLEN BREISBLATT & PAULA BREISBLATT:

1. Jurisdiction in Federal District Court is predicted upon 26 USC Sec. 44 as amended June 30, 1976; P.L. 94-12 Sec. 208 (e) 4 (b) as amended by P.L. 94-45 Sec. 401 (a) and Title 28 USC Sec. 1340.

2. At all times herein mentioned plaintiffs ALLEN BREISBLATT and PAULA BREISBLATT were and are residents and domiciliaries of the Stateof New York.

3. That upon information and belief at all times herein mentioned defendant BAKER FIRESTONE INC., is a domestic

(1)

corporation existing under and by virtue of the laws of the State of New York, having its principal office at 316 Courtland Avenue, Stamford, Connecticut.

4. That at all times herein mentioned and prior to June 25, 1975, defendant was the owner of certain premises known as Unit 4-6 Granada Condominium III located in Town of Greenburgh, Westchester County, White Plains, New York.

5. That on or about the 2nd day of November 1974, plaintiffs ALLEN BREISBLATT and PAULA BREISBLATT entered into a purchase agreement with the defendant BAKER FIRESTONE INC., by defendant EDWIN J. GEKER, a copy of which is hereto attached and incorporated herein and made part hereof (Exhibit #1).

6. That pursuant to said purchase agreement, plaintiffs agreed to purchase and defendant agreed to sell the aforementioned premises at a price of Fifty Three Thousand Four Hundred Seventy Five ($53475.00) Dollars.

7. Pursuant to the purchase agreement on June 25, 1975, plaintiffs and defendant closed title to said premises at which closing defendant delivered to plaintiffs a deed to the aforementioned premises. A copy of which is hereto attached and made a part hereof. (Exhibit #2).

8. That on June 25, 1975, defendants delivered to plaintiffs a certification certifying that construction of the

aforesaid premises was commenced prior to March 26, 1975, and the price was the lowest price for which these premises were offered for sale; a copy of which is hereto attached and made a part hereof (exhibit #3).

9. That upon information and belief, commencing on or about April 1975, and continuing thereafter, the defendants did offer the identical units for sale with an abatement of the carrying charges on all condominium units for a one year period if purchased on or before July 31, 1975. Such advertisements appeared in various newspapers and other public advertisements during the period of April 1975. A copy of which are attached hereto and made a part hereof. (Exhibit #4).

10. That plaintiffs ALLEN BREISBLATT and PAULA BREISBLATT's monthly condominium carrying charges are $62.84 per month or $754.08 per year which amount plaintiffs are paying.

11. That upon information and belief the certification by the defendants on June 25, 1975, was false and fraudulent and was not the lowest price for which the premises were offered for sale after February 28, 1975, but the lower price was $53,475.00 minus the carrying charges for one year or $52,720.92.

12. That at the time the aforesaid certification was made defendants knew or should have known that it was not the lowest price offered.

13. As a result of the aforementioned, plaintiffs have been damaged and seek to recover trible damages and reasonable attorneys' fees pursuant to Title 26 USC Sec. 44 (as amended June 30, 1975 P.L. 94-12 Sec. 208 (e) 4 (b) as amended by P.L. 94-45 Sec. 401 (a).

AS AND FOR A SECOND CAUSE OF ACTION IN FAVOR OF PLAINTIFFS THOMAS A. OLSEN & DEBRA OLSEN:

Plaintiffs repeat and reallege each and every allegation contained in paragraphs one and three as if fully set forth herein at length and further allege:

14. That at all times herein mentioned plaintiffs THOMAS A. OLSEN and DEBRA F. OLSEN were and are residents and domiciliaries of the State of New York.

15. That at all times herein mentioned and prior to June 26, 1975, defendant was the owner of a certain premises known as Unit 4-21 Granada Condominium III located in Town of Greenburgh, Westchester County, White Plains, New York.

16. That on or about the 15th day of February 1975, plaintiffs THOMAS A. OLSEN and DEBRA F. OLSEN entered into a purchase agreement with the defendant BAKER FIRESTONE INC., by defendant EDWIN J. GEKER, a copy of which is hereto attached and incorporated herein and made part hereof. (Exhibit #5)

17. That pursuant to said purchase agreement plaintiffs agreed to purchase and defendant agreed to sell the aforementioned premises at a price of Forty Five Thousand Eight Hundred ($45800.00) Dollars.

18. Pursuant to purchase agreement on June 26, 1975, plaintiffs and defendant closed title to said premises at which closing defendant delivered to plaintiffs a deed to the aforementioned premises. A copy of which is hereto attached and made part hereof (exhibit #6).

19. That on June 26, 1975, defendant delivered to plaintiffs a certification, certifying that construction of the aforesaid premises was commenced prior to March 26, 1975, and the price was the lowest price for which these premises were offered for sale; a copy of which is hereto attached and made a part hereof (exhibit #7).

20. That upon information and belief, commencing on or about April 1975, and continuing thereafter, the defendants did offer the identical units for sale with an abatement of the carrying charges on all condominium units for a one year period if purchased on or before July 31, 1975. Such advertisements appeared in various newspapers and other public advertisements during the period of April 1975. A copy of which are attached hereto and made a part hereof (exhibit #4).

21. That plaintiffs THOMAS A. OLSEN and DEBRA F. OLSEN monthly condominium carrying charges are $46.48 per month of $557.76 per year which amount plaintiffs are paying.

22. That upon information and belief the certification by defendants on June 26, 1975, was false and fraudulent and was not the lowest price for which the premises were offered for sale after February 28, 1975, but the lower price was $45800.00 minus the carrying charges for one year of $45,242.24.

23. That at the time the aforesaid certification was made defendants knew or should have known that it was not the lowest price offered.

24. As a result of the aforementioned plaintiffs have been damaged and seek to recover trible damages and reasonable attorneys fees pursuant to Title 26 USC Sec. 44 (as amended June 30, 1975, P.L. 94-12 Sec. 208 (e) 4 (b) as amended by P.L. 94-45 Sec. 401 (a).

AS AND FOR A THIRD CAUSE OF ACTION IN FAVOR OF PLAINTIFFS JAMBERT W. HOLST AND DOROTHY MOBLEY:

25. Plaintiffs repeat and reallege each and every allegation contained in paragraphs one and three as if fully set forth herein at length and further allege:

26. That at all times herein mentioned plaintiffs JAMBERT W. HOLST and DOROTHY MOBLEY were and are residents and domiciliaries of the State of New York.

27. That at all times herein mentioned and prior to June 25, 1975, defendant was the owner of a certain premises known as Unit 3-5 Granada Condominium III located in town of Greenburgh, Westchester County, White Plains, New York.

28. That on or about the 27th day of November 1974, plaintiffs JAMBERT W. HOLST and DOROTHY MOBLEY entered into a purchase agreement with the defendant BAKER FIRESTONE INC. by defendant EDWIN J. GEKER, a copy of which is hereto attached and incorporated herein and made a part hereof (exhibit #8).

29. That pursuant to said purchase agreement plaintiffs agreed to purchase and defendant agreed to sell the aforementioned premises at a price of Fifty Three Thousand Four Hundred Seventy Five ($53475.00) Dollars.

30. Pursuant to purchase agreement on June 25, 1975, plaintiffs and defendant closed title to said premises at which closing defendant delivered to plaintiffs a deed to the aforementioned premises.

31. That on June 25, 1975, defendant delivered to plaintiffs a certification, certifying that construction of the aforesaid premises was commenced prior to March 26, 1975, and the price was the lowest price for which these premises were offered for sale; a copy of which is hereto attached and made a part hereof (exhibit # 9).

32. That upon information and belief, commencing on or about April 1975, and continuing thereafter, the defendants did offer the identical units for sale with an abatement of the carrying charges on all condominium units for a one year period if purchased on or before July 31, 1975. Such advertisements appeared in various newspapers and other public advertisements during the period of April 1975. A copy of which are attached hereto andmade a part hereof. (Exhibit #4).

33. That plaintiffs JAMBERT W. HOLST and DOROTHY MOBLEY monthly condominium carrying charges are $62.84 per month or $754.08 peryear which amount plaintiffs are paying.

34. That upon information and belief the certification by the defendants on June 26, 1975, was false and fraudulent and was not the lowest price for which the premises were offered for sale after February 28, 1975, but the lower price was $53475.00 minus the carrying charges for one year or $52720.92.

35. That at the time the aforesaid certification was made defendants knew or should have known that it wasnot the lowest price offered.

36. As a result of the aforementioned plaintiffs have been damaged and seek to recovertrible damages and reasonable attorneys fees pursuant to Title 26 USC Sec. 44 (as amended June 30, 1975 P.L. 94-12 Sec. 208 (e) 4 (b) as amended by P.L. 94-45 Sec. 401 (a).

AS AND FOR A FOURTH CAUSE OF ACTION IN FAVOR OF PLAINTIFFS RICHARD A. HLAVENKA AND JUDITH A. HLAVENKA:

37. Plaintiffs repeat and reallege each and every allegation contained in paragraphs one and three as if fully set forth herein at length and further allege:

38. That at all times herein mentioned plaintiffs RICHARD A. HLAVENKA and JUDITH A. HLAVENKA were and are residents and domiciliaries of the State of New York.

39. That at all times herein mentione d and prior to June 25, 1975, defendant was the owner of a certain premises known as Unit 4-8 Granada Condominium III located in town of Greenburgh, Westchester County, White Plains, New York.

40. That on or about the 1st day of November 1974 plaintiffs RICHARD A. HLAVENKA and JUDITH A. HLAVENKA entered in to a purchase agreement with the defendant BAKER FIRESTONE INC., by defendant EDWIN J. GEKER, a copy of which is hereto attached and incorporated herein and made a part hereof (exhibit # 10).

41. That pursuant tc said purchase agreement plaintiffs agreed to purchase and defendant agreed to sell the aforementioned premises at a price of Fourty Five Thousand Eight Hundred ($45800.00)Dollars .

42. Pursuant to purchase agreement on July 21, 1975, plaintiffs and defendant closed title to said premises at which closing defendant delivered to plaintiffs a deed to the aforementioned premises. A copy of which is hereto attached and made a part hereof (exhibit #11).

43. That on March 10, 1976, defendant delivered to plaintiffs a certification, certifying that construction of the aforesaid premises was commenced prior to March 26, 1975, and the price was the lowest price for which these premises were offered for sale; a copy of which is hereto attached and made a part hereof (exhibit #12).

44. That upon information and belief, commencing on or about April 1975, and continuing thereafter, the defendants did offer the identical units for sale with an abatement of the carrying charges on all condominium units for a one year period if purchased on or before July 31, 1975. Such advertisements appeared in various newspapers and other public advertisements during the period of April 1975. A copy of which are hereto attached and made a part hereof. (exhibit #4).

45. That plaintiffs RICHARD A. HLAVENKA and JUDITH HLAVENKA monthly condominium carrying charges are $46.48 per month or $557.76 per year which amount plaintiffs are paying.

46. That upon information and belief the certification by the defendants dated March 10, 1976 was false and fraudulent and not the lowest price for which the premises were offered for sale after February 28, 1975, but the lower price was $45800.00 minus the monthly carrying charges for one year or $45,242.24.

47. That at the time the aforesaid certification was made defendants knew or should have known that it was not the

lowest price offered.

48. As a result of the aforementioned plaintiffs have been damaged and seek to recover trible damages and reasonable attorneys fees pursuant to Title 26 USC Sec. 44 (as amended June 30, 1975 P.L. 94-12 Sec. 208 (e) 4(b) as amended by P.L. 94-45 Sec. 401 (a).

AS AND FOR A FIFTH CAUSE OF ACTION IN FAVOR OF PLAINTIFFS THORTON MCCOY AND EDNA MCCOY:

49. Plaintiffs repeat and reallege each and every allegation contained in paragraphs one and three as if fully set forth herein at length and further allege:

50. That at all times herein mentioned plaintiffs THORTON McCOY and EDNA McCOY were and are residents and domiciliaries of the State of New York.

51. That at all times herein mentioned and prior to June 27, 1975, defendant was the owner of certain premises known as Unit 3-6 Granada Condominium III located in Town of Greenburgh, Westchester County, White Plains, New York.

52. That on or about the 18th day of November 1974, plaintiffs THORTON McCOY and EDNA McCOY entered into a purchase agreement with the defendant BAKER FIRESTONE INC. by defendant EDWIN J. GEKER.

53. That pursuant to said purchase agreement plaintiffs agreed to purchase and defendant agreed to sell the aforementioned premises at a price of Thirty Five Thousand One

Hundred Fifty ($35150.00) Dollars.

54. That pursuant to purchase agreement on June 27, 1975, plaintiffs and defendant closed title to said premises at which closing defendant delivered to plaintiffs a deed to the aforementioned premises. A copy of which is hereto attached and made a part hereof. (Exhibit # 13).

55. That on June 25, 1975, defendant delivered to plaintiffs a certification, certifying that construction of the aforesaid premises was commenced prior to March 26, 1975, and the price was the lowest price for which these premises were offered for sale; a copy of which is hereto attached and made a part hereof (exhibit #14).

56. That upon information and belief, commencing on or about April 1975, and continuing thereafter, the defendants did offer the identical units for sale with an abatement of the carrying charges on all condominium units for a one year period if purchased on or before July 31, 1975. Such advertisements appeared in various newspapers and other public advertisements during the period of April 1975. A copy of which are hereto attached and made a part hereof (exhibit #4).

57. That plaintiffs THORTON McCOY and EDNA McCOY monthly carrying charges are $33.83 per month or $405.96 per year which amount plaintiffs are paying.

58. That upon information and belief the certification by the defendants on June 25, 1975, was not the lowest price for which the premises were offered for sale after February 28, 1975, but the lower price was $35,150.00 minus the monthly carrying charges for one year or $34,744.04.

59. That at the time the aforesaid certification was made defendants knew or should have known that it was not the lowest price offered.

60. As a result of the aforementioned, plaintiffs have been damaged and seek to recover trible damages and reasonable attorneys fees pursuant to Title 26 USC Sec. 44 (as amended June 30, 1975 P.L. 94-12 Sec. 208 (e) 4 (b) as amended by P.L. 94-45 Sec. 401 (a).

AS AND FOR A SIXTH CAUSE OF ACTION ON BEHALF OF ALL OF THE ABOVE MENTIONED PLAINTIFFS

61. Plaintiffs repeat and reallege each and every allegation contained in paragraphs numbered one through sixty as if fully set forth herein at length and further alleges:

62. That as a result of the aforementioned plaintiff herein have been damaged and caused to seek legal counsel in defense of their respective rights under the law.

63. That the reasonable cost for legal services rendered and to be rendered in these proceedings is Eight Thousand ($8000.00) Dollars.

WHEREFORE, plaintiffs demand judgment in the first cause of action for $2262.24; on the second cause of action for $1673.28; for the third cause of action $2262.24; on the fourth cause of action $1673.28; on the fifth cause of action $1217.88, and on the sixth cause of action $8000.00 together with interest, costs and disbursements.

Dated: New York, N.Y.
July 16, 1976

Yours, etc.,

EDELMAN & JENNINGS
Attys. for Plaintiff
277 Broadway
New York, New York 10007

Plaintiff's Exhibit 1
Annexed to Complaint

Purchase Agreement dated on or about November 2, 1974
to Allen Breisblatt and Paula Breisbl[illegible]

GRANADA CONDOMINIUM III
PURCHASE AGREEMENT

15a

The undersigned Seller agrees to sell and the undersigned Purchaser agrees to purchase Home No. , to be constructed as part of Granada Condominium III (the "Condominium"), Town of Greenburgh, Westchester County, New York together with the undivided interest of the Home in the Common Elements appurtenant thereto (said Home and its appurtenant Common Elements being hereinafter referred to as the "Home"), all upon the following terms and conditions:

Purchase Price		$ 53475
Down payment (payable as follows):		
Initial deposit (paid hereunder)	$250.00	
Additional Deposit to be paid within ten days	$	4830
Due at Closing	$	
To be paid by mortgage	$	48395.

The Home is the same premises referred to by the same Home number in the Declaration, By-Laws and Offering Plan of the Condominium, in the schedules and exhibits annexed thereto and in the Trust Funds Section therein referred to (the "Condominium Documents"), all of which are incorporated herein by reference and made a part of this Agreement with the same force and effect as if set forth in full herein. This sale includes wall-to-wall carpeting except in bathrooms (Purchaser having a choice of carpeting or vinyl sheetgoods in kitchens), a refrigerator, dishwasher, oven and range, kitchen cabinets, bath vanities and/or vanity tops, clothes washer and clothes dryer.

Purchaser hereby acknowledges that he received a copy of the Offering Plan of the Condominium at least 72 hours prior to the time of the execution by him of this Agreement. As stated on page 15 of the Offering Plan, Purchaser understands that if the Offering Plan is not consummated for any reason he may lose all or part of his investment.

This Agreement is conditioned upon the Manufacturers Hanover Trust Company ("Manufacturers" or the "Bank") issuing a written commitment within 90 days after the signing of this agreement to issue to Purchaser or to purchase from Seller a mortgage loan in the above amount covering the Home and to be amortized over a period of 30 years (or such lesser term as Purchaser may elect or the Bank may approve). The mortgage will provide for such interest rate as is the maximum interest permitted under New York State law on the closing of title to the Home. The present maximum rate is 8½% per annum. The interest rate will remain constant during the term of the mortgage. The form of the mortgage and mortgage note shall be substantially as set forth in the Condominium Documents. Purchaser agrees that within three days from the signing of this Agreement, he shall apply to the Seller for the aforesaid mortgage loan, and shall furnish to Seller and the Bank, such information or data pertaining to Purchaser's financial condition as Seller or the Bank may require. If within 90 days from the date hereof the Bank shall fail to issue its mortgage commitment, and the Seller shall fail to secure said mortgage loan for the Purchaser from any other lending institution or to grant the mortgage loan itself on substantially similar terms and conditions as the Manufacturers mortgage, either Seller or Purchaser may cancel this Agreement by giving written notice of such election to the other within 5 days after the date of the Bank's notice of disapproval, and thereupon this Agreement shall be null and void and neither party shall have any liability to the other hereunder except that the Trust Agent shall return to the Purchaser the deposit paid on the execution of this Agreement, without interest.

Closing of title shall take place as soon as practicable after a Certificate of Occupancy for the Home has been issued and after a Declaration of Condominium covering the Home has been filed in the Westchester County Clerk's Office and upon not less than ten days' notice in writing from Seller to Purchaser.

Purchaser will, at closing, pay (a) $125 to cover the cost of a map of the Site Plan of the land, recording fees for the Deed and the Power of Attorney in favor of the Board of Managers and the New York State Real Estate transfer tax; (b) mortgage closing costs consisting of: the New York mortgage tax, the premium for the mortgage title insurance policy and recording fees for the mortgage and lending institution's attorneys fees pertaining to the mortgage of $, and, if Purchaser obtains a Magic mortgage rather than a conventional mortgage, the premium of the private mortgage insurance company insuring his mortgage of 1% of the face amount of the mortgage plus $20 (no mortgage closing costs will be payable if Purchaser does not obtain a mortgage); (c) if obtained by Purchaser, premiums for fee title insurance insuring the Purchaser; (d) to the Board of Managers an amount equal to 3 months common charges assessed during the month title closes; (e) special assessment common charge equal to two-thirds of one month's common charge in reimbursement for funds the Sponsor advanced for the purchase of Home No. 8-1 in Granada Condominium by said condominium for use by a resident superintendent for the benefit of the entire planned development as outlined in the attached Offering Plan; and (f) all fees and expenses, if any, of his own attorney. Estimated real estate taxes and assessments for the tax year in which title closes, and common charges for the month in which title closes, shall be adjusted as of the closing date.

If title has not been conveyed to Purchaser within fifteen months after the execution of this Agreement (except where such failure is due to default of Purchaser), Purchaser shall have the right, which shall be his sole remedy (unless caused by the wilful default of Seller), to cancel this Purchase Agreement by written notice given to Seller within 10 days thereafter. Upon such cancellation, or if the Offering Plan is abandoned, this Agreement shall be null and void and neither party shall have any further liability to the other herein except that Purchaser shall be entitled to the return of any monies paid hereunder, without interest.

Certain of the conditions of closing, more fully referred to in the Condominium Documents, are set forth on the reverse side of this Agreement and made a part hereof.

This Agreement together with the Condominium Documents contains the entire agreement of the parties. The Purchaser has relied only upon the warranties or representations as to any Homes, their size, dimensions or other physical characteristics or as to financial data or estimated income tax deductions as set forth in this Agreement and the Condominium documents and no oral representations or statements shall be considered a part hereof nor shall this Agreement be terminated or modified except in writing signed by both parties.

The Home shall be constructed by the Seller as provided in the Offering Plan. The construction of, and materials and equipment installed in the Home shall be governed by the Offering Plan and architectural plans and specifications covering the Home.

Dated: Nov 2, 1974

.....
Purchaser

.....
Purchaser

Address: .....

.....

Telephone: .....

.....
Sales Representative

This Agreement is not binding on Seller until signed by.

BAKER-FIRESTONE, INC.

By: .....

GRANADA CONDOMINIUM III

1. At closing of title, Seller shall deliver to Purchaser a bargain and sale deed, with covenants against Grantor's acts, conveying the Home to Purchaser, subject only to the exceptions referred to in the Condominium Documents. The deed shall be substantially as set forth in the Condominium Documents and executed and acknowledged by Seller, in form for recording, with all requisite documentary stamps affixed thereto at Seller's expense. Simultaneous with the delivery of the deed, Purchaser shall execute and deliver to Seller the purchase money note and mortgage, if any, to be made to Seller on account of the purchase price. Purchaser shall pay to Seller the balance of the purchase price by certified check of the purchaser, or cashier's check, to the order of the Seller.

2. At closing of title, Purchaser shall execute, acknowledge and deliver to the Seller and to the representative of the title company insuring title to the Home for recording in the Office of the County Clerk of Westchester County, a Power of Attorney in the form annexed to the Condominium Documents.

3. This Agreement shall be subject and subordinate to title exceptions referred to in the Condominium Documents, easements, restrictions, agreements, declarations and reservations of record, and to any mortgages now or hereafter placed on the Home or Condominium Property, and to any subsequent advances made thereunder, provided the Seller satisfies such mortgage or obtains a release of the Home from the lien of such mortgage at or prior to the closing date.

4. The time for the payment of the purchase price hereunder is of the essence of this Agreement. If Purchaser fails to make such payment on the date hereinbefore provided or on such later date as the parties hereto shall agree upon in writing, or shall fail to perform any of the Purchaser's other obligations hereunder, the Seller may send notice by certified mail to the Purchaser of Seller's intention to cancel this Agreement if such default shall not be cured within five days thereafter. If the Purchaser shall fail to cure such default within such five-day period, then in addition to any other remedies available to it, the Seller may, at its option, elect to cancel this Agreement by notice to the Purchaser and retain the contract deposit held by it or the Trust Agent as liquidated damages. If Seller shall elect to cancel this Agreement it shall, not less than five days after the giving of the notice of cancellation, certify to the Trust Fund Agent and Wofsey, Certilman, Haft, Snow & Becker (a) the occurrence of each of the foregoing events and (b) that Purchaser has failed to object to or protect the action so taken by the Seller within five days after the sending by the Seller of such notice of intention of cancellation by certified mail. The Trust Fund Agent and Wofsey, Certilman, Haft, Snow & Becker may rely on the truth and accuracy of the facts contained in such certification and the authority of the person or persons executing the same.

5. The Purchaser acknowledges that the Bank has made no representations or warranties as to the value or condition of the Home, and, that he shall not rely in any way upon the inspections, appraisals or the underwriting practices of the Bank in connection with the purchase and/or mortgaging of the Home.

BEST COPY AVAILABLE

Plaintiff's Exhibit 2

Annexed to Complaint

Deed dated June 25, 1975 to Allen Breisblatt and Paula Breisblatt

LIBER 7271 PAGE 531

DEED

17a

THIS INDENTURE made the 25 day of June , 1975 between BAKER-FIRESTONE, INC., a New York corporation having its principal office at 316 Courtland Avenue, Stamford, Connecticut, Fairfield County, "Grantor", and residing at Allen Breisblatt and Paula Breisblatt, his wife
1085 Warburton Avenue
Yonkers, New York
"Grantee",

WITNESSETH:

That the Grantor, in consideration of Ten ($10.00) Dollars and other valuable consideration paid by the Grantee, does hereby grant and release unto the Grantee, and the heirs or successors and assigns of the Grantee, forever:

The Home (hereinafter referred to as "Unit") known as Unit No. 4-6 , Town of Greenburgh, Westchester County, New York, and also designated and described as Unit No. 4-6 in the Declaration establishing a plan for condominium ownership of the land and buildings comprising Granada Condominium III (hereinafter called the "Property") made by the Grantor under Article 9B of the New York Real Property Law, dated June 19, 1975, and recorded in the Office of the County Clerk of Westchester County on June 19, 1975, in Liber 7268 of Conveyances at page 337 (hereinafter called the "Declaration"), which Unit is also designated as Tax Lot No. 4-6 on the Floor Plans of the Buildings, certified by Bernard Arnold on June 12, 1975, and filed simultaneously with said Declaration in the Office of the County Clerk of Westchester County, as Map No. 18541 (hereinafter called the "Unit").

TOGETHER with an undivided 1.7414 per cent interest in the Common Elements of the Property described in said Declaration (hereinafter called the "Common Elements");

TOGETHER with an easement in common with the owners of other Units to use any roads, pipes, wires, ducts, cables, conduits, public utility lines and other Common Elements located in any of the other units or elsewhere on the Property, and serving the Unit;

TOGETHER with the appurtenances and all the estate and rights of the Grantor in and to the Unit;

TOGETHER with and SUBJECT to all easements of necessity in favor of the Unit or in favor of other Units or the Common Elements;

TOGETHER with and SUBJECT to easements, rights of way, restrictions, declarations, agreements and covenants of record;

TOGETHER with and SUBJECT to an easement for the exclusive use of any balcony, terrace or enclosed patio to which there is direct access from the Interior of the Unit.

07939

TAX STAMPS ATTACHED $ 58.30 JUL - 2 1975

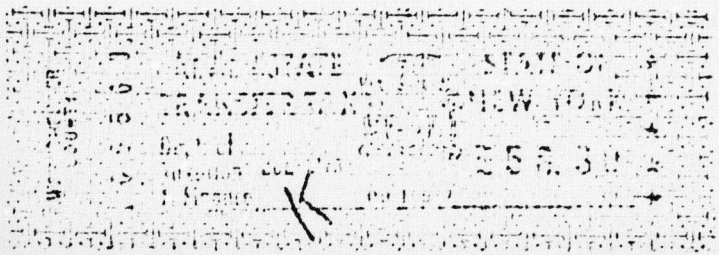
Conveyance Tax $ 58.30

SUBJECT to Declaration of Covenants, Restrictions, Easements Charges and Liens by Grantor, dated March 22, 1973 and recorded in the Office of the County Clerk of Westchester County on March 26, 1973 in Liber 7115 of Conveyances at Page 267, as amended by instrument dated July 19, 1974 and recorded in the Office of the County Clerk of Westchester County on July 19, 1974 in Liber 7209 of Conveyances at Page 250, which Declaration, as amended, is incorporated herein by reference, and in which Grantor reserves to itself, its successors and assigns the easements described therein as easements appurtenant to adjoining property for the benefit of the owner or owners of adjoining property.

TOGETHER with and SUBJECT to easements in favor of adjoining Units and in favor of the Common Elements for the continuance of all encroachments of such adjoining Units or Common Elements on the Unit, now existing as a result of construction of the Buildings, or which may come into existence hereinafter as a result of settling or shifting of the Buildings, or as a result of repair or restoration of the Buildings or of any adjoining unit or of the Common Elements, after damage or destruction by fire or other casualty, or after a taking in condemnation or eminent domain proceeding, or by reason of an alteration or repair to the Common Elements made by or with the consent of the Board of Managers.

SUBJECT also to an easement in favor of the other units to use the roads, pipes, wires, ducts, conduits, cables, public utility lines and other Common Elements located in the Unit or elsewhere on the Property and serving such other Units.

SUBJECT to the provisions of the Declaration, By-Laws and Floor Plans of the Condominium recorded simultaneously with and as part of the Declaration, as the same may be amended from time to time by instruments recorded in the Office of the County Clerk of Westchester County which provisions, together with any amendments thereto, shall constitute convenants running with the land and shall bind any person having at any time any interest or estate in the Unit, as though such provisions were recited and stipulated at length herein.



TO HAVE AND TO HOLD the same unto the Grantee, and the heirs or successors and assigns of the Grantee, forever.

The use for which the Unit is intended is that of a one-family residence as defined in the aforementioned Declaration.

And the Grantor covenants that it has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

The Grantor, in compliance with Section 13 of the Lien Law, covenants that the Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the same for any other prupose.

This conveyance is made in the regular course of business actually conducted by the Grantor, and is not a substantial portion of the assets of the Grantor.

IN WITNESS WHEREOF, the Grantor has duly executed this deed the day and year first above written.

BAKER-FIRESTONE, INC.

By Donald B. Keelan

Donald B. Keelan
Vice President

STATE OF NEW YORK }
COUNTY OF WESTCHESTER } ss.:

On the 25 day of June, 1975 before me personally came Donald B. Keelan to me known, who, being by me duly sworn, did depose and say that he resides at Pine Ridge Drive, Wappingers Falls, New York, that he is a Vice-President of BAKER-FIRESTONE, INC., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

George A. Frates Jr.
Notary Public

GEORGE A. FRATES, JR.
NOTARY PUBLIC, State of New York
No. 60-1305775
Qualified in Westchester County
Term Expires March 30, 19

Plaintiff's Exhibit 3

Annexed to Complaint

Certification dated June 25, 1975
of Allen Breisblatt and Paula Breisblatt

A BAKER COMPANY
Baker-Firestone, Inc.
316 Courtland Avenue Stamford, Connecticut 06906
203-348-9293

I certify that the construction of the residence at 4-6 Granada Crescent, Town of Greenburgh, Westchester, New York was begun before March 26, 1975, and that this residence has never been offered for sale in a listing, a written private offer, or an offer by means of advertisement at a lower purchase price than $ 53,475.00, the price at which I sold the residence to Allen Breisblatt, Paula Breisblatt (Name), 1085 Warburton Avenue, Yonkers, New York (Present Address), 082-34-4006, 060-34-2268 (Social Security Number) by contract dated November 2, 1974.

Baker-Firestone, Inc.

082-34-4006
060-34-2268
Taxpayer's Identification Number

By Edwin J. Goher
Edwin J. Goher
Vice President

June 25, 1975
Date

Plaintiff's Exhibit 3

Annexed to Complaint

Certification dated June 25, 1975
of Allen Breisblatt and Paula Breisblatt

A BAKER COMPANY
Baker-Firestone, Inc.
316 Courtland Avenue Stamford, Connecticut 06906
203-348-9293

I certify that the construction of the residence at 4-6 Granada Crescent, Town of Greenburgh, Westchester, New York was begun before March 26, 1975, and that this residence has never been offered for sale in a listing, a written private offer, or an offer by means of advertisement at a lower purchase price than $ 53,475.00, the price at which I sold the residence to Allen Breisblatt, Paula Breisblatt (Name), 1085 Warburton Avenue, Yonkers, New York (Present Address), 082-34-4006, 060-34-2268 (Social Security Number) by contract dated November 2, 1974.

Baker-Firestone, Inc.

082-34-4006
060-34-2268
Taxpayer's Identification Number

By Edwin J. Goher
Edwin J. Goher
Vice President

June 25, 1975
Date

Plaintiff's Exhibit 4

Annexed to Complaint

Advertisement

Exhibit 4

20a

Westchester.
3 bedrooms. 2 baths.
Country club environment.
From $48,825*
Come to the party!

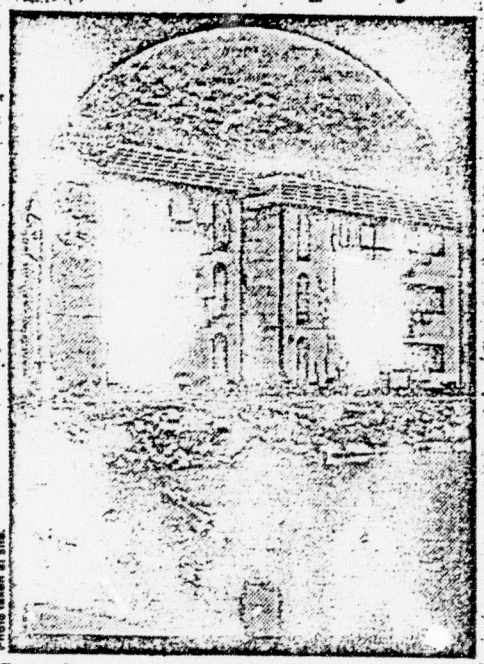


Photo taken at site.

Granada. A touch of Spain less than an hours' commute from Manhattan. Gracious living in the country-club style.

And with over 200 condominium-owners living here already, Granada is a wonderful neighborhood to move to.

Come get acquainted with our lagoon, hillside location and private club. With its pool and sundecks. Exercise room. Saunas. Game Parlor. Lounge and kitchen.

And come see the apartments that come all complete. *With your gas heat and hot water included in the monthly payment.* With wall to wall carpeting, 2-door 14 cu. ft. refrigerator-freezer. A dishwasher. Built in range and self cleaning oven. Clothes washer. Clothes dryer.

Granada III

2 and 3 bedroom condominiums, from $34,650 to $53,975.

We will pay your common charges for 12 full months if you purchase before July 31, 1975 and we qualify for the 5% Federal income tax credit.

Buy now and save.

* These are the lowest prices at which these units have been offered. Persons purchasing these new units may be entitled to substantial tax benefits under the recently enacted tax credit law, subject to rules and regulations to be issued by the Internal Revenue Service. If you qualify, it may mean a tax credit of 5% of the purchase price (but not more than $2,000) against personal income tax due on your 1975 tax return.

45 minutes from mid-town Manhattan.

298 Hillside Ave., White Plains, N.Y. (914) 946-8585. Minutes from Cross Westchester expressway, Bronx River Pkwy, Sprain Brook Pkwy, N.Y. Thruway and the Tappan Zee Bridge.

BAKER-FIRESTONE'S NEWEST CONDOMINIUM COMMUNITY.

Models open 7 days, 10 to 6. Directions: Driving West: Take I-287 (Cross West. Exp.) to exit 5, turn right at stop sign, proceed 4/10 mile to entrance. East: Take I-287 to exit 4. At stop sign turn left, proceed to Old Tarrytown Rd. and turn right, proceed to end and turn left, go 4/10 mile to entrance.

All appliances by Westinghouse.

This advertisement is not an offering, which can be made only by formal prospectus N.Y. 571.

BEST COPY AVAILABLE

Plaintiff's Exhibit 5

Annexed to Complaint

Purchase Agreement dated February 15, 1975
to Thomas A. Olsen and Debra F. Olsen

GRANADA CONDOMINIUM III
PURCHASE AGREEMENT

21a

The undersigned Seller agrees to sell and the undersigned Purchaser agrees to purchase Home No. , to be constructed as part of Granada Condominium III (the "Condominium"), Town of Greenburgh, Westchester County, New York together with the undivided interest of the Home in the Common Elements appurtenant thereto (said Home and its appurtenant Common Elements being hereinafter referred to as the "Home"), all upon the following terms and conditions:

Purchase Price		$ _____
Down payment (payable as follows):		
Initial deposit (paid hereunder)	$250.00	_____
Additional Deposit to be paid within ten days	$	_____
Due at Closing	$	_____
To be paid by mortgage	$	_____

The Home is the same premises referred to by the same Home number in the Declaration, By-Laws and Offering Plan of the Condominium, in the schedules and exhibits annexed thereto and in the Trust Funds Section therein referred to (the "Condominium Documents"), all of which are incorporated herein by reference and made a part of this Agreement with the same force and effect as if set forth in full herein. This sale includes wall-to-wall carpeting except in bathrooms (Purchaser having a choice of carpeting or vinyl sheetgoods in kitchens), a refrigerator, dishwasher, oven and range, kitchen cabinets, bath vanities and/or vanity tops, clothes washer and clothes dryer.

Purchaser hereby acknowledges that he received a copy of the Offering Plan of the Condominium at least 72 hours prior to the time of the execution by him of this Agreement. As stated on page 15 of the Offering Plan, Purchaser understands that if the Offering Plan is not consummated for any reason he may lose all or part of his investment.

This Agreement is conditioned upon the Manufacturers Hanover Trust Company ("Manufacturers" or the "Bank") issuing a written commitment within 90 days after the signing of this agreement to issue to Purchaser or to purchase from Seller a mortgage loan in the above amount covering the Home and to be amortized over a period of 30 years (or such lesser term as Purchaser may elect or the Bank may approve). The mortgage will provide for such interest rate as is the maximum interest permitted under New York State law on the closing of title to the Home. The present maximum rate is 8½% per annum. The interest rate will remain constant during the term of the mortgage. The form of the mortgage and mortgage note shall be substantially as set forth in the Condominium Documents. Purchaser agrees that within three days from the signing of this Agreement, he shall apply to the Seller for the aforesaid mortgage loan, and shall furnish to Seller and the Bank, such information or data pertaining to Purchaser's financial condition as Seller or the Bank may require. If within 90 days from the date hereof the Bank shall fail to issue its mortgage commitment, and the Seller shall fail to secure said mortgage loan for the Purchaser from any other lending institution or to grant the mortgage loan itself on substantially similar terms and conditions as the Manufacturers mortgage, either Seller or Purchaser may cancel this Agreement by giving written notice of such election to the other within 5 days after the date of the Bank's notice of disapproval, and thereupon this Agreement shall be null and void and neither party shall have any liability to the other hereunder except that the Trust Agent shall return to the Purchaser the deposit paid on the execution of this Agreement, without interest.

Closing of title shall take place as soon as practicable after a Certificate of Occupancy for the Home has been issued and after a Declaration of Condominium covering the Home has been filed in the Westchester County Clerk's Office and upon not less than ten days' notice in writing from Seller to Purchaser.

Purchaser will, at closing, pay (a) $125 to cover the cost of a map of the Site Plan of the land, recording fees for the Deed and the Power of Attorney in favor of the Board of Managers and the New York State Real Estate transfer tax; (b) mortgage closing costs consisting of: the New York mortgage tax, the premium for the mortgage title insurance policy and recording fees for the mortgage and lending institution's attorneys fees pertaining to the mortgage of $, and, if Purchaser obtains a Magic mortgage rather than a conventional mortgage, the premium of the private mortgage insurance company insuring his mortgage of 1% of the face amount of the mortgage plus $20 (no mortgage closing costs will be payable if Purchaser does not obtain a mortgage); (c) if obtained by Purchaser, premiums for fee title insurance insuring the Purchaser; (d) to the Board of Managers an amount equal to 3 months common charges assessed during the month title closes; (e) special assessment common charge equal to two-thirds of one month's common charge in reimbursement for funds the Sponsor advanced for the purchase of Home No. 8-1 in Granada Condominium by said condominium for use by a resident superintendent for the benefit of the entire planned development as outlined in the attached Offering Plan; and (f) all fees and expenses, if any, of his own attorney. Estimated real estate taxes and assessments for the tax year in which title closes, and common charges for the month in which title closes, shall be adjusted as of the closing date.

If title has not been conveyed to Purchaser within fifteen months after the execution of this Agreement (except where such failure is due to default of Purchaser), Purchaser shall have the right, which shall be his sole remedy (unless caused by the wilful default of Seller), to cancel this Purchase Agreement by written notice given to Seller within 10 days thereafter. Upon such cancellation, or if the Offering Plan is abandoned, this Agreement shall be null and void and neither party shall have any further liability to the other herein except that Purchaser shall be entitled to the return of any monies paid hereunder, without interest.

Certain of the conditions of closing, more fully referred to in the Condominium Documents, are set forth on the reverse side of this Agreement and made a part hereof.

This Agreement together with the Condominium Documents contains the entire agreement of the parties. The Purchaser has relied only upon the warranties or representations as to any Homes, their size, dimensions or other physical characteristics or as to financial data or estimated income tax deductions as set forth in this Agreement and the Condominium documents and no oral representations or statements shall be considered a part hereof nor shall this Agreement be terminated or modified except in writing signed by both parties.

The Home shall be constructed by the Seller as provided in the Offering Plan. The construction of, and materials and equipment installed in the Home shall be governed by the Offering Plan and architectural plans and specifications covering the Home.

Dated: Feb. 15, 1975

.....
Purchaser

.....
Purchaser

Address: .....

.....

Telephone: .....

.....
Sales Representative

This Agreement is not binding on Seller until signed by:

BAKER-FIRESTONE, INC.

By: .....

1. At closing of title, Seller shall deliver to Purchaser a bargain and sale deed, with covenants against Grantor's acts, conveying the Home to Purchaser, subject only to the exceptions referred to in the Condominium Documents. The deed shall be substantially as set forth in the Condominium Documents and executed and acknowledged by Seller, in form for recording, with all requisite documentary stamps affixed thereto at Seller's expense. Simultaneous with the delivery of the deed, Purchaser shall execute and deliver to Seller the purchase money note and mortgage, if any, to be made to Seller on account of the purchase price. Purchaser shall pay to Seller the balance of the purchase price by certified check of the purchaser, or cashier's check, to the order of the Seller.

2. At closing of title, Purchaser shall execute, acknowledge and deliver to the Seller and to the representative of the title company insuring title to the Home for recording in the Office of the County Clerk of Westchester County, a Power of Attorney in the form annexed to the Condominium Documents.

3. This Agreement shall be subject and subordinate to title exceptions referred to in the Condominium Documents, easements, restrictions, agreements, declarations and reservations of record, and to any mortgages now or hereafter placed on the Home or Condominium Property, and to any subsequent advances made thereunder, provided the Seller satisfies such mortgage or obtains a release of the Home from the lien of such mortgage at or prior to the closing date.

4. The time for the payment of the purchase price hereunder is of the essence of this Agreement. If Purchaser fails to make such payment on the date hereinbefore provided or on such later date as the parties hereto shall agree upon in writing, or shall fail to perform any of the Purchaser's other obligations hereunder, the Seller may send notice by certified mail to the Purchaser of Seller's intention to cancel this Agreement if such default shall not be cured within five days thereafter. If the Purchaser shall fail to cure such default within such five-day period, then in addition to any other remedies available to it, the Seller may, at its option, elect to cancel this Agreement by notice to the Purchaser and retain the contract deposit held by it or the Trust Agent as liquidated damages. If Seller shall elect to cancel this Agreement it shall, not less than five days after the giving of the notice of cancellation, certify to the Trust Fund Agent and Wofsey, Certilman, Haft, Snow & Becker (a) the occurrence of each of the foregoing events and (b) that Purchaser has failed to object to or protect the action so taken by the Seller within five days after the sending by the Seller of such notice of intention of cancellation by certified mail. The Trust Fund Agent and Wofsey, Certilman, Haft, Snow & Becker may rely on the truth and accuracy of the facts contained in such certification and the authority of the person or persons executing the same.

5. The Purchaser acknowledges that the Bank has made no representations or warranties as to the value or condition of the Home, and, that he shall not rely in any way upon the inspections, appraisals or the underwriting practices of the Bank in connection with the purchase and/or mortgaging of the Home.

Plaintiff's Exhibit 6

Annexed to Complaint

Deed dated June 26, 1975
to Thomas A. Olsen and Debra F. Olsen

DEED

23a

THIS INDENTURE made the 26 day of June , 1975 between BAKER-FIRESTONE, INC., a New York corporation having its principal office at 316 Courtland Avenue, Stamford, Connecticut, Fairfield County, "Grantor", and Thomas A. Olsen and Debra F. Olsen residing at 100 Truesdale Drive Croton-On-Hudson, New York "Grantee",

WITNESSETH:

That the Grantor, in consideration of Ten ($10.00) Dollars and other valuable consideration paid by the Grantee, does hereby grant and release unto the Grantee, and the heirs or successors and assigns of the Grantee, forever:

The Home (hereinafter referred to as "Unit") known as Unit No. 4-21, Town of Greenburgh, Westchester County, New York, and also designated and described as Unit No. 4-21 in the Declaration establishing a plan for condominium ownership of the land and buildings comprising Granada Condominium III (hereinafter called the "Property") made by the Grantor under Article 9B of the New York Real Property Law, dated June 19, 1975, and recorded in the Office of the County Clerk of Westchester County on June 19, 1975, in Liber 7268 of Conveyances at page 337 (hereinafter called the "Declaration"), which Unit is also designated as Tax Lot No. 4-21 on the Floor Plans of the Buildings, certified by Bernard Arnold on June 12, 1975, and filed simultaneously with said Declaration in the Office of the County Clerk of Westchester County, as Map No. 18541 (hereinafter called the "Unit").

TOGETHER with an undivided 1.2879 per cent interest in the Common Elements of the Property described in said Declaration (hereinafter called the "Common Elements");

TOGETHER with an easement in common with the owners of other Units to use any roads, pipes, wires, ducts, cables, conduits, public utility lines and other Common Elements located in any of the other units or elsewhere on the Property, and serving the Unit;

TOGETHER with the appurtenances and all the estate and rights of the Grantor in and to the Unit;

TOGETHER with and SUBJECT to all easements of necessity in favor of the Unit or in favor of other Units or the Common Elements;

TOGETHER with and SUBJECT to easements, rights of way, restrictions, declarations, agreements and covenants of record;

TOGETHER with and SUBJECT to an easement for the exclusive use of any balcony, terrace or enclosed patio to which there is direct access from the Interior of the Unit.

SUBJECT to Declaration of Covenants, Restrictions, Easements Charges and Liens by Grantor, dated March 22, 1973 and recorded in the Office of the County Clerk of Westchester County on March 26, 1973 in Liber 7115 of Conveyances at Page 267, as amended by instrument dated July 19, 1974 and recorded in the Office of the County Clerk of Westchester County on July 19, 1974 in Liber 7209 of Conveyances at Page 250, which Declaration, as amended, is incorporated herein by reference, and in which Grantor reserves to itself, its successors and assigns the easements described therein as easements appurtenant to adjoining property for the benefit of the owner or owners of adjoining property.

TOGETHER with and SUBJECT to easements in favor of adjoining Units and in favor of the Common Elements for the continuance of all encroachments of such adjoining Units or Common Elements on the Unit, now existing as a result of construction of the Buildings, or which may come into existence hereinafter as a result of settling or shifting of the Buildings, or as a result of repair or restoration of the Buildings or of any adjoining unit or of the Common Elements, after damage or destruction by fire or other casualty, or after a taking in condemnation or eminent domain proceeding, or by reason of an alteration or repair to the Common Elements made by or with the consent of the Board of Managers.

SUBJECT also to an easement in favor of the other units to use the roads, pipes, wires, ducts, conduits, cables, public utility lines and other Common Elements located in the Unit or elsewhere on the Property and serving such other Units.

SUBJECT to the provisions of the Declaration, By-Laws and Floor Plans of the Condominium recorded simultaneously with and as part of the Declaration, as the same may be amended from time to time by instruments recorded in the Office of the County Clerk of Westchester County which provisions, together with any amendments thereto, shall constitute convenants running with the land and shall bind any person having at any time any interest or estate in the Unit, as though such provisions were recited and stipulated at length herein.

Conveyance Tax $ 50.05

TO HAVE AND TO HOLD the same unto the Grantee, and the heirs or successors and assigns of the Grantee, forever.

The use for which the Unit is intended is that of a one-family residence as defined in the aforementioned Declaration.

And the Grantor covenants that it has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

The Grantor, in compliance with Section 13 of the Lien Law, covenants that the Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the same for any other prupose.

This conveyance is made in the regular course of business actually conducted by the Grantor, and is not a substantial portion of the assets of the Grantor.

IN WITNESS WHEREOF, the Grantor has duly executed this deed the day and year first above written.

BAKER-FIRESTONE, INC.

By .....
Donald B. Keelan
Vice President

STATE OF NEW YORK }
COUNTY OF WESTCHESTER } ss.:

On the 26 day of June, 1975, before me personally came Donald B. Keelan to me known, who, being by me duly sworn, did depose and say that he resides at Pine Ridge Drive, Wappingers Falls, New York, that he is a Vice-President of BAKER-FIRESTONE, INC., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

.....
Notary Public

Plaintiff's Exhibit 7

Annexed to Complaint

Certification dated June 26, 1975 to
Thomas A. Olsen and Debra Olsen
and
Deed dated June 26, 1975
to
Lambert W. Holst and Dorothy Mobley

A BAKER COMPANY
Baker-Firestone, Inc.
316 Courtland Avenue Stamford, Connecticut 06906
203-348-9293

I certify that the construction of the residence at 4-21 Granada Crescent Town of Greenburgh, Westchester, New York was begun before March 26, 1975, and that this residence has never been offered for sale in a listing, a written private offer, or an offer by means of advertisement at a lower purchase price than $ 45,800.00, the price at which I sold the residence to Thomas A. Olsen Debra F. Olsen (Name) 100 Truesdale Drive, Croton-On-Hudson, New York (Present Address) by contract dated February 15, 1975.

116-34-9194
061-40-7402
Social Security Number

Baker-Firestone, Inc.

116-34-9194
061-40-7402
Taxpayer's Identification Number

By Edwin J. Geher
Edwin J. Geher
Vice President

June 26, 1975
Date

A BAKER COMPANY
Baker-Firestone, Inc.
316 Courtland Avenue Stamford Connecticut 06906
203-348-9293

26a

I certify that the construction of the residence at 3-5 Granada Crescent,
Town of Greenburgh, Westchester, New York
was begun before March 26, 1975, and that this residence has never been offered for sale in a listing, a written private offer, or an offer by means of advertisement at a lower purchase price than $ 53,475.00,
the price at which I sold the residence to Lambert W. Holst
Dorothy Mobley
Name
1860 Andrews Avenue, Bronx, New York,
Present Address
073-18-4778
115-26-1822 by contract dated November 27, 1974.
Social Security Number

Baker-Firestone, Inc.

073-18-4778
115-26-1822
Taxpayer's Identification Number

By Edwin J. Geher
Edwin J. Geher
Vice President

June 25, 1975
Date

Plaintiff's Exhibit 10

Annexed to Complaint

Purchase Agreement dated November 1, 1974 to
Richard A. Hlavenka and Judith A. Hlavenka

GRANADA CONDOMINIUM III
PURCHASE AGREEMENT

The undersigned Seller agrees to sell and the undersigned Purchaser agrees to purchase Home No. 4-B, to be constructed as part of Granada Condominium III (the "Condominium"), Town of Greenburgh, Westchester County, New York together with the undivided interest of the Home in the Common Elements appurtenant thereto (said Home and its appurtenant Common Elements being hereinafter referred to as the "Home"), all upon the following terms and conditions:

Purchase Price		$ 45,000.00
Down payment (payable as follows):		
Initial deposit (paid hereunder)	$250.00	
Additional Deposit to be paid within ten days	$	$ 4,101.00
Due at Closing	$	- 0 -
To be paid by mortgage	$	$ 41,449.00

The Home is the same premises referred to by the same Home number in the Declaration, By-Laws and Offering Plan of the Condominium, in the schedules and exhibits annexed thereto and in the Trust Funds Section therein referred to (the "Condominium Documents"), all of which are incorporated herein by reference and made a part of this Agreement with the same force and effect as if set forth in full herein. This sale includes wall-to-wall carpeting except in bathrooms (Purchaser having a choice of carpeting or vinyl sheetgoods in kitchens), a refrigerator, dishwasher, oven and range, kitchen cabinets, bath vanities and/or vanity tops, clothes washer and clothes dryer.

Purchaser hereby acknowledges that he received a copy of the Offering Plan of the Condominium at least 72 hours prior to the time of the execution by him of this Agreement. As stated on page 15 of the Offering Plan, Purchaser understands that if the Offering Plan is not consummated for any reason he may lose all or part of his investment.

This Agreement is conditioned upon the Manufacturers Hanover Trust Company ("Manufacturers" or the "Bank") issuing a written commitment within 90 days after the signing of this agreement to issue to Purchaser or to purchase from Seller a mortgage loan in the above amount covering the Home and to be amortized over a period of 30 years (or such lesser term as Purchaser may elect or the Bank may approve). The mortgage will provide for such interest rate as is the maximum interest permitted under New York State law on the closing of title to the Home. The present maximum rate is 8½% per annum. The interest rate will remain constant during the term of the mortgage. The form of the mortgage and mortgage note shall be substantially as set forth in the Condominium Documents. Purchaser agrees that within three days from the signing of this Agreement, he shall apply to the Seller for the aforesaid mortgage loan, and shall furnish to Seller and the Bank, such information or data pertaining to Purchaser's financial condition as Seller or the Bank may require. If within 90 days from the date hereof the Bank shall fail to issue its mortgage commitment, and the Seller shall fail to secure said mortgage loan for the Purchaser from any other lending institution or to grant the mortgage loan itself on substantially similar terms and conditions as the Manufacturers mortgage, either Seller or Purchaser may cancel this Agreement by giving written notice of such election to the other within 5 days after the date of the Bank's notice of disapproval, and thereupon this Agreement shall be null and void and neither party shall have any liability to the other hereunder except that the Trust Agent shall return to the Purchaser the deposit paid on the execution of this Agreement, without interest.

Closing of title shall take place as soon as practicable after a Certificate of Occupancy for the Home has been issued and after a Declaration of Condominium covering the Home has been filed in the Westchester County Clerk's Office and upon not less than ten days' notice in writing from Seller to Purchaser.

Purchaser will, at closing, pay (a) $125 to cover the cost of a map of the Site Plan of the land, recording fees for the Deed and the Power of Attorney in favor of the Board of Managers and the New York State Real Estate transfer tax; (b) mortgage closing costs consisting of: the New York mortgage tax, the premium for the mortgage title insurance policy and recording fees for the mortgage and lending institution's attorneys fees pertaining to the mortgage of $ [illegible], and, if Purchaser obtains a Magic mortgage rather than a conventional mortgage, the premium of the private mortgage insurance company insuring his mortgage of 1% of the face amount of the mortgage plus $20 (no mortgage closing costs will be payable if Purchaser does not obtain a mortgage); (c) if obtained by Purchaser, premiums for fee title insurance insuring the Purchaser; (d) to the Board of Managers an amount equal to 3 months common charges assessed during the month title closes; (e) special assessment common charge equal to two-thirds of one month's common charge in reimbursement for funds the Sponsor advanced for the purchase of Home No. 8-1 in Granada Condominium by said condominium for use by a resident superintendent for the benefit of the entire planned development as outlined in the attached Offering Plan; and (f) all fees and expenses, if any, of his own attorney. Estimated real estate taxes and assessments for the tax year in which title closes, and common charges for the month in which title closes, shall be adjusted as of the closing date.

If title has not been conveyed to Purchaser within fifteen months after the execution of this Agreement (except where such failure is due to default of Purchaser), Purchaser shall have the right, which shall be his sole remedy (unless caused by the wilful default of Seller), to cancel this Purchase Agreement by written notice given to Seller within 10 days thereafter. Upon such cancellation, or if the Offering Plan is abandoned, this Agreement shall be null and void and neither party shall have any further liability to the other herein except that Purchaser shall be entitled to the return of any monies paid hereunder, without interest.

Certain of the conditions of closing, more fully referred to in the Condominium Documents, are set forth on the reverse side of this Agreement and made a part hereof.

This Agreement together with the Condominium Documents contains the entire agreement of the parties. The Purchaser has relied only upon the warranties or representations as to any Homes, their size, dimensions or other physical characteristics or as to financial data or estimated income tax deductions as set forth in this Agreement and the Condominium documents and no oral representations or statements shall be considered a part hereof nor shall this Agreement be terminated or modified except in writing signed by both parties.

The Home shall be constructed by the Seller as provided in the Offering Plan. The construction of, and materials and equipment installed in the Home shall be governed by the Offering Plan and architectural plans and specifications covering the Home.

Dated: 11-1, 1974

[signature]
Purchaser

197 NOTTINGHAM RD. APT E
BEDFORD HILLS, N.Y. 10507

[signature]
Purchaser

Address: 1425 BEDFORD ST.
STAMFORD, CT. 06905

Telephone: 203-327-2747

[signature]
Sales Representative

This Agreement is not binding on Seller until signed by:

BAKER-FIRESTONE, INC.

By: [signature]

GRANADA CONDOMINIUM III

1. At closing of title, Seller shall deliver to Purchaser a bargain and sale deed, with covenants against Grantor's acts, conveying the Home to Purchaser, subject only to the exceptions referred to in the Condominium Documents. The deed shall be substantially as set forth in the Condominium Documents and executed and acknowledged by Seller, in form for recording, with all requisite documentary stamps affixed thereto at Seller's expense. Simultaneous with the delivery of the deed, Purchaser shall execute and deliver to Seller the purchase money note and mortgage, if any, to be made to Seller on account of the purchase price. Purchaser shall pay to Seller the balance of the purchase price by certified check of the purchaser, or cashier's check, to the order of the Seller.

2. At closing of title, Purchaser shall execute, acknowledge and deliver to the Seller and to the representative of the title company insuring title to the Home for recording in the Office of the County Clerk of Westchester County, a Power of Attorney in the form annexed to the Condominium Documents.

3. This Agreement shall be subject and subordinate to title exceptions referred to in the Condominium Documents, easements, restrictions, agreements, declarations and reservations of record, and to any mortgages now or hereafter placed on the Home or Condominium Property, and to any subsequent advances made thereunder, provided the Seller satisfies such mortgage or obtains a release of the Home from the lien of such mortgage at or prior to the closing date.

4. The time for the payment of the purchase price hereunder is of the essence of this Agreement. If Purchaser fails to make such payment on the date hereinbefore provided or on such later date as the parties hereto shall agree upon in writing, or shall fail to perform any of the Purchaser's other obligations hereunder, the Seller may send notice by certified mail to the Purchaser of Seller's intention to cancel this Agreement if such default shall not be cured within five days thereafter. If the Purchaser shall fail to cure such default within such five-day period, then in addition to any other remedies available to it, the Seller may, at its option, elect to cancel this Agreement by notice to the Purchaser and retain the contract deposit held by it or the Trust Agent as liquidated damages. If Seller shall elect to cancel this Agreement it shall, not less than five days after the giving of the notice of cancellation, certify to the Trust Fund Agent and Wofsey, Certilman, Haft, Snow & Becker (a) the occurrence of each of the foregoing events and (b) that Purchaser has failed to object to or protect the action so taken by the Seller within five days after the sending by the Seller of such notice of intention of cancellation by certified mail. The Trust Fund Agent and Wofsey, Certilman, Haft, Snow & Becker may rely on the truth and accuracy of the facts contained in such certification and the authority of the person or persons executing the same.

5. The Purchaser acknowledges that the Bank has made no representations or warranties as to the value or condition of the Home, and, that he shall not rely in any way upon the inspections, appraisals or the underwriting practices of the Bank in connection with the purchase and/or mortgaging of the Home.

Plaintiff's Exhibit 11

Annexed to Complaint

Deed dated July 21, 1976 to
Richard A. Hlavenka and Judith A. Hlavenka

LIBER 7610 PAGE 314

DEED

29a

THIS INDENTURE made the 21 day of July , 1975 between BAKER-FIRESTONE, INC., a New York corporation having its principal office at 316 Courtland Avenue, Stamford, Connecticut, Fairfield County, "Grantor", and residing at Richard A. Hlavenka and Judith A. Hlavenka
1425 Bedford Avenue
Stamford, Connecticut
"Grantee",

WITNESSETH:

That the Grantor, in consideration of Ten ($10.00) Dollars and other valuable consideration paid by the Grantee, does hereby grant and release unto the Grantee, and the heirs or successors and assigns of the Grantee, forever:

The Home (hereinafter referred to as "Unit") known as Unit No. 4-8 , Town of Greenburgh, Westchester County, New York, and also designated and described as Unit No. 4-8 in the Declaration establishing a plan for condominium ownership of the land and buildings comprising Granada Condominium III (hereinafter called the "Property") made by the Grantor under Article 9B of the New York Real Property Law, dated June 19, 1975, and recorded in the Office of the County Clerk of Westchester County on June 19, 1975, in Liber 7268 of Conveyances at page 337 (hereinafter called the "Declaration"), which Unit is also designated as Tax Lot No. 4-8 on the Floor Plans of the Buildings, certified by Bernard Arnold on June 12, 1975, and filed simultaneously with said Declaration in the Office of the County Clerk of Westchester County, as Map No. 18541 (hereinafter called the "Unit").

TOGETHER with an undivided 1.2879 per cent interest in the Common Elements of the Property described in said Declaration (hereinafter called the "Common Elements");

TOGETHER with an easement in common with the owners of other Units to use any roads, pipes, wires, ducts, cables, conduits, public utility lines and other Common Elements located in any of the other units or elsewhere on the Property, and serving the Unit;

TOGETHER with the appurtenances and all the estate and rights of the Grantor in and to the Unit;

TOGETHER with and SUBJECT to all easements of necessity in favor of the Unit or in favor of other Units or the Common Elements;

TOGETHER with and SUBJECT to easements, rights of way, restrictions, declarations, agreements and covenants of record;

TOGETHER with and SUBJECT to an easement for the exclusive use of any balcony, terrace or enclosed patio to which there is direct access from the Interior of the Unit.

RECORDED JUL 24 1975 09233

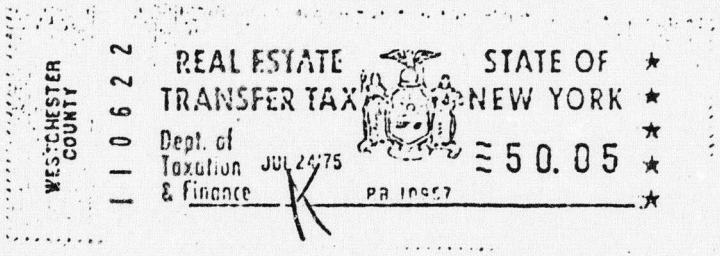
Conveyance Tax $ 50.05

SUBJECT to Declaration of Covenants, Restrictions, Easements Charges and Liens by Grantor, dated March 22, 1973 and recorded in the Office of the County Clerk of Westchester County on March 26, 1973 in Liber 7115 of Conveyances at Page 267, as amended by instrument dated July 19, 1974 and recorded in the Office of the County Clerk of Westchester County on July 19, 1974 in Liber 7209 of Conveyances at Page 250, which Declaration, as amended, is incorporated herein by reference, and in which Grantor reserves to itself, its successors and assigns the easements described therein as easements appurtenant to adjoining property for the benefit of the owner or owners of adjoining property.

TOGETHER with and **SUBJECT** to easements in favor of adjoining Units and in favor of the Common Elements for the continuance of all encroachments of such adjoining Units or Common Elements on the Unit, now existing as a result of construction of the Buildings, or which may come into existence hereinafter as a result of settling or shifting of the Buildings, or as a result of repair or restoration of the Buildings or of any adjoining unit or of the Common Elements, after damage or destruction by fire or other casualty, or after a taking in condemnation or eminent domain proceeding, or by reason of an alteration or repair to the Common Elements made by or with the consent of the Board of Managers.

SUBJECT also to an easement in favor of the other units to use the roads, pipes, wires, ducts, conduits, cables, public utility lines and other Common Elements located in the Unit or elsewhere on the Property and serving such other Units.

SUBJECT to the provisions of the Declaration, By-Laws and Floor Plans of the Condominium recorded simultaneously with and as part of the Declaration, as the same may be amended from time to time by instruments recorded in the Office of the County Clerk of Westchester County which provisions, together with any amendments thereto, shall constitute convenants running with the land and shall bind any person having at any time any interest or estate in the Unit, as though such provisions were recited and stipulated at length herein.



Plaintiff's Exhibit 12

Annexed to Complaint

Certification dated November 1, 1974 to
Richard A. Hlavenka and Judith A. Hlavenka

Baker-Firestone, Inc.
316 Courtland Avenue Stamford Connecticut 06906
203-348-9293

I certify that the construction of the residence at 4-8 Granada Crescent, Town of Greenburgh, Westchester, New York was begun before March 26, 1975, and that this residence has never been offered for sale in a listing, a written private offer, or an offer by means of advertisement at a lower purchase price after February 28, 1975 than $ 45,800.00, the price at which I sold the residence to

Richard A. Hlavenka and Judith A. Hlavenka (Name) 4-8 Granada Crescent (Present Address)
Town of Greenburgh, New York, (Social Security Number)

by contract dated November 1, 1974.

BAKER-FIRESTONE, INC.

By Edwin J. Geher
Edwin J. Geher
Vice President

Taxpayer's Identification Number

March 10, 1976
Date

BEST COPY AVAILABLE

Plaintiff's Exhibit 13

Annexed to Complaint

Deed dated June 27, 1975 to
Thorton McCoy and Edna McCoy

31a

DEED

THIS INDENTURE made the 27 day of June , 1975 between BAKER-FIRESTONE, INC., a New York corporation having its principal office at 316 Courtland Avenue, Stamford, Connecticut, Fairfield County, "Grantor", and residing at Thorton McCoy and Edna McCoy
515 Muny Lane
Mt. Vernon, New York "Grantee",

WITNESSETH:

That the Grantor, in consideration of Ten ($10.00) Dollars and other valuable consideration paid by the Grantee, does hereby grant and release unto the Grantee, and the heirs or successors and assigns of the Grantee, forever:

The Home (hereinafter referred to as "Unit") known as Unit No. 3-6 , Town of Greenburgh, Westchester County, New York, and also designated and described as Unit No. 3-6 in the Declaration establishing a plan for condominium ownership of the land and buildings comprising Granada Condominium III (hereinafter called the "Property") made by the Grantor under Article 9B of the New York Real Property Law, dated June 19, 1975, and recorded in the Office of the County Clerk of Westchester County on June 19, 1975, in Liber 7268 of Conveyances at page 337 (hereinafter called the "Declaration"), which Unit is also designated as Tax Lot No. 3-6 on the Floor Plans of the Buildings, certified by Bernard Arnold on June 12, 1975, and filed simultaneously with said Declaration in the Office of the County Clerk of Westchester County, as Map No. 18541 (hereinafter called the "Unit").

TOGETHER with an undivided .9375 per cent interest in the Common Elements of the Property described in said Declaration (hereinafter called the "Common Elements");

TOGETHER with an easement in common with the owners of other Units to use any roads, pipes, wires, ducts, cables, conduits, public utility lines and other Common Elements located in any of the other units or elsewhere on the Property, and serving the Unit;

TOGETHER with the appurtenances and all the estate and rights of the Grantor in and to the Unit;

TOGETHER with and SUBJECT to all easements of necessity in favor of the Unit or in favor of other Units or the Common Elements;

TOGETHER with and SUBJECT to easements, rights of way, restrictions, declarations, agreements and covenants of record;

TOGETHER with and SUBJECT to an easement for the exclusive use of any balcony, terrace or enclosed patio to which there is direct access from the Interior of the Unit.

SUBJECT to Declaration of Covenants, Restrictions, Easements Charges and Liens by Grantor, dated March 22, 1973 and recorded in the Office of the County Clerk of Westchester County on March 26, 1973 in Liber 7115 of Conveyances at Page 267, as amended by instrument dated July 19, 1974 and recorded in the Office of the County Clerk of Westchester County on July 19, 1974 in Liber 7209 of Conveyances at Page 250, which Declaration, as amended, is incorporated herein by reference, and in which Grantor reserves to itself, its successors and assigns the easements described therein as easements appurtenant to adjoining property for the benefit of the owner or owners of adjoining property.

TOGETHER with and SUBJECT to easements in favor of adjoining Units and in favor of the Common Elements for the continuance of all encroachments of such adjoining Units or Common Elements on the Unit, now existing as a result of construction of the Buildings, or which may come into existence hereinafter as a result of settling or shifting of the Buildings, or as a result of repair or restoration of the Buildings or of any adjoining unit or of the Common Elements, after damage or destruction by fire or other casualty, or after a taking in condemnation or eminent domain proceeding, or by reason of an alteration or repair to the Common Elements made by or with the consent of the Board of Managers.

SUBJECT also to an easement in favor of the other units to use the roads, pipes, wires, ducts, conduits, cables, public utility lines and other Common Elements located in the Unit or elsewhere on the Property and serving such other Units.

SUBJECT to the provisions of the Declaration, By-Laws and Floor Plans of the Condominium recorded simultaneously with and as part of the Declaration, as the same may be amended from time to time by instruments recorded in the Office of the County Clerk of Westchester County which provisions, together with any amendments thereto, shall constitute convenants running with the land and shall bind any person having at any time any interest or estate in the Unit, as though such provisions were recited and stipulated at length herein.

Conveyance Tax $ 38.50

TO HAVE AND TO HOLD the same unto the Grantee, and the heirs or successors and assigns of the Grantee, forever.

The use for which the Unit is intended is that of a one-family residence as defined in the aforementioned Declaration.

And the Grantor covenants that it has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

The Grantor, in compliance with Section 13 of the Lien Law, covenants that the Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the same for any other prupose.

This conveyance is made in the regular course of business actually conducted by the Grantor, and is not a substantial portion of the assets of the Grantor.

IN WITNESS WHEREOF, the Grantor has duly executed this deed the day and year first above written.

BAKER-FIRESTONE, INC.

By .....
Donald B. Keelan
Vice President

STATE OF NEW YORK }
COUNTY OF WESTCHESTER } ss.:

On the 27 day of June , 19 75 before me personally came Donald B. Keelan to me known, who, being by me duly sworn, did depose and say that he resides at Pine Ridge Drive, Wappingers Falls, New York, that he is a Vice-President of BAKER-FIRESTONE, INC., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

.....
Notary Public

Plaintiff's Exhibit 14

Annexed to Complaint

Certification dated June 26, 1975 to
Thorton McCoy and Edna McCoy

33a

Check to follow $1.75

A BAKER COMPANY
Baker-Firestone, Inc.
316 Courtland Avenue, Stamford, Connecticut 06906
203-348-9293

I certify that the construction of the residence at 3-6 Granada Crescent Town of Greenburgh, Westchester, New York was begun before March 26, 1975, and that this residence has never been offered for sale in a listing, a written private offer, or an offer by means of advertisement at a lower purchase price than $ 35,150.00, the price at which I sold the residence to Thorton McCoy and Edna McCoy
Name
515 Muny Lane, Mt. Vernon, New York,
Present Address
088-14-8366
081-24-1413
Social Security Number
by contract dated November 18, 1974.

Baker-Firestone, Inc.

088-14-8366
081-24-1413
Taxpayer's Identification Number

By Edwin J. Geher
Edwin J. Geher
Vice President

June 26, 1975
Date

X

Stipulation of Facts

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALLEN BREISBLATT, PAULA BREISBLATT, THOMAS A. OLSEN, DEBRA F. OLSEN, JAMBERT W. HOLST, DOROTHY MOBLEY, RICHARD A. HLAVENKA, JUDITH HLAVENKA, THORTON McCOY and EDNA McCOY,

Plaintiffs, Case #76 Civ. 3299

-against-

BAKER-FIRESTONE, INC. and EDWIN J. GEHER,

Defendants.

STIPULATION OF FACTS

The undersigned attorneys for the parties hereto hereby stipulate the following facts:

Parties

Baker-Firestone, Inc., a defendant, is the former owner of residential units in the Granada Condominium III, purchased by the plaintiffs.

All of the plaintiffs are purchasers of residential units in Granada Condominium III, having purchased their units from Baker-Firestone, Inc.

Edwin J. Geher is a vice-president of Baker-Firestone, Inc. He certified, on behalf of Baker-Firestone, Inc., that the respective units purchased by the respective plaintiffs had "never been offered for sale in a listing, a written private offer, or an offer by means of advertisement, at a lower purchase price..." Copies of said certifications are

annexed to plaintiffs' complaint.

Facts

Between November 1, 1974 and February 15, 1975, the plaintiffs contracted to purchase units in Granada Condominium III from Baker-Firestone, Inc. Title to all of these units was closed in June and July of 1975, at the prices set forth in the respective contracts, copies of which are annexed to the complaint.

In April 1975, after all of the aforesaid contracts were signed between Baker-Firestone, Inc. and the plaintiffs, but before any of the closings had taken place, Baker-Firestone made an offer to sell units by advertisement. This offer was for all non-contracted-for units, including units of the exact same models as contracted for by plaintiffs in Granada Condominium III, with an abatement of carrying charges for a period of one year if the units were purchased on or before July 31, 1975. Baker-Firestone, Inc. did not extend this offer to any contract vendee for units already under contract, and refused to apply said offer to the plaintiffs. The offer, however, did extend to units which had not been contracted for as of April 1, 1975, including units constructed on the exact same models as units being purchased by the plaintiffs.

On the date of each closing Edwin J. Geher certified on behalf of Baker-Firestone, Inc. "that this residence has never been offered for sale in a listing, a written private offer, or an offer by means of advertisement at a lower purchase

price. . ." This certification was made in an attempt to comply with Section 44 of the Internal Revenue code so that the plaintiffs could obtain tax credits for the purchase of new residences.

The plaintiffs do not contend that Baker-Firestone, Inc., prior to signing contracts with the plaintiffs, offered plaintiffs units for sale at a lower price.

The parties agree that the contract prices, purchase prices and monthly and yearly carrying charges set forth in the complaint are correct.

EDELMAN & JENNINGS
Attorneys for Plaintiffs
Office & P.O. Address
277 Broadway
New York, New York 10007
Tele: 212/349-2181

D'ANDREA & GOLDSTEIN
Attorneys for Defendants
Office & P.O. Address
100 Stevens Avenue
Mount Vernon, New York 10550
Tele: 914/664-2567

Opinion and Order of Griesa, U.S.D.J.
Dismissing Plaintiff's Complaint

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

ALLEN BREISBLATT, PAULA BREISBLATT, THOMAS A. OLSEN, DEBRA F. OLSEN, JAMBERT W. HOLST, DOROTHY MOBLEY, RICHARD A. HLAVENKA, JUDITH HLAVENKA, THORTON McCOY and EDNA McCOY,

Plaintiffs,

v.

BAKER-FIRESTONE, INC. and EDWIN J. GEHER,

Defendants.

76 Civ. 3299

OPINION

- -X

GRIESA, J.

This case is being tried without a jury on the basis of stipulated facts. It is agreed that only issues of law need to be decided. This opinion deals with such issues.

The action is by condominium purchasers against a condominium vendor for treble damages under Section 208(b) of the Tax Reduction Act of 1975, as amended, 89 Stat. 35 and 89 Stat. 244. Section 208(b), which is not contained in the United States Code, provides a remedy for violation of Section 44 of the Internal Revenue Code.

The latter statute grants a tax credit for a portion of the purchase price paid by a taxpayer for a new principal residence. To be eligible for the credit,

the taxpayer must attach to his tax return a certificate by the seller that the purchase price paid by the taxpayer-buyer "is the lowest price at which the residence was offered for sale." Int. Rev. Code § 44. Section 208(b) of the Tax Reduction Act of 1975 provides that, in the event a seller makes the certification required by Section 44, and if that certification is false -- i.e., the price for which the residence was sold exceeded the lowest price at which the residence was offered -- then the seller is liable to the purchaser for treble the amount of the excess, plus a reasonable attorney's fee.

Plaintiffs purchased residential condominium units from defendant, Baker-Firestone, Inc., in a development known as Granada Condominium III. The contracts for plaintiffs' purchases were entered into on various dates between November 1, 1974 and February 15, 1975. The closings occurred in June and July 1975.

In April 1975, after plaintiffs' purchase contracts were executed, but before plaintiffs' closings had occurred, defendants published an offer to sell units in Granada III with the inducement of an abatement of carrying charges for one year if the units were purchased

on or before July 31, 1975. This offer referred to units which had not yet been contracted for. It did not apply to plaintiffs' units.

At the time of each of the closings of plaintiffs' units, defendants made a certification under Section 44 that "this residence has never been offered for sale in a listing, a written private offer, or an offer by means of advertisement at a lower purchase price...."

Plaintiffs do not contend that defendants offered any of their units for a lower price before they signed their contracts. They claim that the published offer of April 1975, made prior to the closings of their condominium purchases, violated Section 44, and that they are entitled to the treble damage remedy of Section 208(b).

The relevant portions of Section 44 are as follows:

> "§ 44. Purchase of new principal residence
>
> (a) General rule.--In the case of an individual there is allowed, as a credit against the tax imposed by this chapter for the taxable year, an amount equal to 5 percent of the purchase price of a new principal residence purchased or constructed by the taxpayer.
>
> * * *

"(e) Property to which section applies.--

* * *

"(4) Certification must be attached to return.--This section does not apply to any residence (other than a residence constructed by the taxpayer) unless there is attached to the return of tax on which the credit is claimed a written certification (which may be in any form) signed by the seller of such residence that--

(A) construction of the residence began before March 26, 1975, and

(B) the purchase price of the residence is the lowest price at which the residence was offered for sale after February 28, 1975."

Section 208(b) of the Tax Reduction Act of 1975 provides:

"(b) SUITS TO RECOVER AMOUNTS OF PRICE INCREASES.--If--

(1) any person certified under section 44(e)(4) of the Internal Revenue Code of 1954 that the price for which a residence was sold is the lowest price at which the residence was offered for sale after February 28, 1975, and

(2) the price for which the residence was sold exceeded the lowest price at which the residence was offered for sale after February 28, 1975,

such person shall be liable to the purchaser of such residence in an amount equal to three times the amount of such excess. The United States district courts shall have jurisdiction of suits to recover such amounts without regard to any other provision of law. In any suit brought under this subsection in which judgment is entered for the purchaser, he shall also be entitled to recover a reasonable attorney's fee."

There are two passages in these statutes which are particularly important for the present case. First, there is the language of Section 44(e)(4)(B), which provides that the certification must state that "the purchase price of the residence is the lowest price at which the residence was offered for sale after February 28, 1975." Second, there is the language of Section 208(b), which provides for damages if "the price for which the residence was sold exceeded the lowest price at which the residence was offered for sale after February 28, 1975."

In the present case the purchase prices of plaintiffs' units were fixed by contracts entered into between November 1, 1974 and February 15, 1975. These specific units were not, of course, offered for sale to anyone else <u>after</u> the time of the contracts; and any offers which might have been made <u>before</u> the contracts were made prior to February 28, 1975 and not covered by the statutes. In any event, it is conceded that there were no lower offers prior to the contracts with plaintiffs.

The problem arises, not because of any lower offers with respect to plaintiffs' specific units, but because of a lower offer for condominium units of the same type, which occurred in April 1975, after plaintiffs' contracts but before the closings. A regulation under Section 44 of the Internal Revenue Code provides that an offer to sell a residence includes an offer to sell a specific type of condominium unit based on a model. Regs. § 1.44-3(c)(3)(ii).

Plaintiffs argue that Section 44 was violated since this lower offer for similar condominiums was made before plaintiffs' closings.

Neither the statutes nor the regulations specifically answer the present problem -- i.e., whether Section 44 is violated where there is a contract price for certain condominium units, and where there are subsequent lower offers by the condominium seller after the contract but before the closing.

In connection with the statutes, Congress probably had primarily in mind the conventional situation of a single residence which is placed on the market and then withdrawn from the market after a contract is signed. The contract would fix the price, and it would also signify the cessation of any offers for sale by the seller. There is no indication that Congress contemplated any problems about precise distinctions between contract and closing, or problems regarding multiple residential units similar in type. The Congressional language is too general to indicate specific focus on these issues.

Plaintiffs' argument in the present case would carry the statutes beyond what appears to be their intended purpose. Congress was interested in encouraging the purchase of new residences, and accordingly provided a tax credit for purchasers. At the same time, Congress apparently wished to prevent a seller from artificially raising the price of a residence in order to obtain the benefit of the tax credit himself. However, there is no indication that Congress intended that, after contracts had been signed for the purchase of certain units in a

development, the prices of the other units would be frozen and that the seller would be penalized for reducing prices in response to market forces. Such a result would inhibit the sale of residences and would be detrimental to both sellers and buyers.

There is no indication that the conduct of defendants in the present case, in connection with their contracts with plaintiffs, involved an artificial raising of prices to benefit from the tax credits. There is no indication that defendants' April 1975 offer was anything other than a bona fide response to market conditions.

I hold therefore that there was no violation of the applicable statutes. The action is dismissed.

So ordered.

Dated: New York, New York
March 23, 1977

Thomas P. Griesa

THOMAS P. GRIESA
U.S.D.J.

APR 12 3 59 PM '77

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALLEN BREISBLATT, PAULA BREISBLATT, THOMAS A. OLSEN, DEBRA F. OLSEN, JAMBERT W. HOLST, DOROTHY MOBLEY, RICHARD A. HLAVENKA, JUDITH HLAVENKA, THORTON McCOY and EDNA McCOY,

Plaintiffs,

v.

BAKER FIRESTONE INC. and EDWIN J. GEHER,

Defendants.

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76 Civ. 3299

TPG

NOTICE OF APPEAL

Field Jue

Notice is hereby given that the plaintiffs above named hereby appeal to the United States Court of Appeals for the Second Circuit from the Order of the Honorable Thomas P. Griesa, dismissing the Complaint of above captioned action on stipulated facts submitted to the Judge. That said Order was entered in this action on the 23rd day of March 1977.

Dated: New York, New York
April 8, 1977

EDELMAN & JENNINGS
Attys. for Plaintiffs
277 Broadway
New York, New York 10007
212-349-2181

STATE OF NEW YORK }
CITY OF NEW YORK } ss.:
COUNTY OF NEW YORK }

Clyde Pearson, being duly sworn, deposes and says, that he is over 18 years of age. That on the 18th day of May, 1977, he served 2 copies of the attached Joint Appendix on the attorneys for the Defendants-Appellees herein by depositing the same, properly enclosed in a securely sealed post-paid wrapper, in a U. S. Post Office at 90 Church Street, New York City, directed to said attorneys ~~at~~ as follows:

D'Andrea & Goldstein, Esqs.
100 Stevens Avenue
Mt Vernon, New York 10550

that being the place where they maintain ~~an~~ offices for the regular transaction of business, and the last address mentioned in the papers last served by them

Clyde Pearson

Sworn to before me this
19th day of May, 1977.

Monroe D. Rosen

MONROE D. ROSEN
Notary Public, State of New York
No. 24-4616690
Qualified in Kings County
Commission Expires March 30, 1979